



U.S. General Services Administration

Federal Acquisition Service

FSS PROFESSIONAL SERVICES NAICS ISSUES

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June 09, 2016

NAICS at FSS Contract Level

- Current System Limitations
- FAR Requirements
- FSS CO Size Determination

NAICS at FSS Contract Level

- Current System Limitations
 - ✓ Regardless of the Contract Vehicle, only one size can be awarded in a contract.
- FAR Requirements
 - ✓ FAR 19.102(d) choose primary NAICS.
- FSS CO Contract Level Size Determination
 - ✓ Verify primary NAICS chosen by contractor is reasonable (this will be the NAICS shown under contractor name in E-library).

NAICS at ORDER Level

- Special Item Numbers (SIN)
- Multiple NAICS Per SIN
- Determine Order NAICS

NAICS at ORDER Level

- Special Item Numbers
 - ✓ Determine which SINs needed to satisfy requirement (could be more than one).
- Multiple NAICS Per SIN
 - ✓ Each SIN chosen may have more than one NAICS.
- Determine Order NAICS
 - ✓ Determine the SIN representing primary purpose of requirement.
 - ✓ Determine the primary NAICS under that SIN (if more than one).

Order Set-aside Challenges

- Contractor size in FSS Contract
- Contractor size in FSS Order
- Size protests

Order Set-aside Challenges

- Contractor size for NAICS in Contract
 - ✓ Remember, contractor size is determined by primary NAICS at the contract level.
- Contractor size for NAICS in Order
 - ✓ Primary NAICS in order (remember: limited to the primary NAICS chosen from the primary SIN) may be a different size standard than primary NAICS used to award FSS Contract size.
- Size protests to SBA on orders
 - ✓ Timeliness of protest.
 - ✓ Contingent upon order size re-certification requirement.

FAR 8.405-5 Critical Sentences

- FAR 8.405-5(b) 2nd Sentence
 - ✓ *“For purposes of reporting an order placed with a small business schedule contractor, an ordering agency may only take credit if the awardee meets a size standard that corresponds to the work performed.”*
- FAR 8.405-5(b) 3rd (last) Sentence
 - ✓ *“Ordering activities should rely on the small business representations made by schedule contractors at the contract level.”*
- Contradiction
 - ✓ The two sentences can contradict each other when the primary NAICS used to determine FSS Contract size differs from the order primary NAICS.
 - ✓ Example: A requirement calls for both SIN 899-1 & SIN 899-8. The primary NAICS for the order is from SIN 899-1 NAICS 541620 \$15M Size Standard.
 - ✓ Contractor awarded both SINs under FSS Contract, but primary NAICS under FSS Contract to determine size is 562910 (\$20.5M or 500 employee size standard).
 - ✓ Contractor may not be small for 541620.

Suggested RFQ Language (set-aside example)

- Explicitly state in your RFQ which SINs are required
 - ✓ Example: *“We will only accept quotes from contractors or Contractor Teaming Arrangements who cover both SINs 899-1 Environmental Consulting and 899-8 Remediation & Reclamation Services”*
- Explicitly state in your RFQ which SIN and NAICS represents the primary purpose of the requirement (reference [FAR 19.303\(a\)\(1\)](#) requiring you to assign a NAICS code to any solicitation above the micro-purchase threshold)
 - ✓ Example: *“SIN 899-1 with NAICS 541620 Environmental Consulting Services is designated as the NAICS representing the primary purpose of this requirement.”*
- Explicitly state in your RFQ whether or NOT you will require size re-certification at the order level
 - ✓ Example: *“We are NOT re-certifying size at the order level. We will only accept quotes from FSS contractors shown as a small business** under their contract in E-library.”*
 - ✓ Example: *“We ARE requiring size re-certification at the order level. We will only accept quotes from FSS contractors who re-certify as a small business ** for this order under NAICS 541620 Environmental Consulting Services size standard \$15M.”*

** For socioeconomic set-asides, choose the category (e.g. “SDVOSB”).

SBA Size Protests

- 13 CFR 121.1004 Timeliness Under Long-Term Contracts (which includes FSS)
 - ✓ First, an interested party may protest a size certification made at the time the long-term contract is initially awarded. (13 CFR 121.1004(a)(3)(i))
 - ✓ Second, an interested party may protest a size certification made at the time the long-term contract option is exercised (13 CFR 121.1004(a)(3)(ii))
 - ✓ Third, an interested party may protest a size certification “...in response to a contracting officer’s request for size certifications in connection with an individual order...” (13 CFR 121.1004(a)(3)(iii))
- SBA Office of Hearings and Appeals decisions
 - ✓ Non-FSS ID/IQ’s:
 - SBA No. SIZ-5177 SIZE APPEALS OF: SAFETY AND ECOLOGY CORPORATION, APPELLANT
 - SBA No. SIZ-5207 SIZE APPEAL OF: QUANTUM PROFESSIONAL SERVICES, INC., APPELLANT
 - ✓ FSS BPA
 - SBA No. SIZ-5562 SIZE APPEAL OF: TOTAL SYSTEMS TECHNOLOGIES CORPORATION, APPELLANT
- Each decision resulted in (among other issues) the size protests being untimely
 - ✓ The untimeliness decision is consistently based on a finding that the Contracting Officer did not explicitly require a new size certification for the order.

New SBA Regulations

Reference Document:

**“New SBA Regulations Affecting Multiple Award
Contracts”**

Require Size Re-certification or Not?

- **NOT requiring size re-certification for the order**

- ✓ This is the default and is in line with [FAR 8.405-5\(b\)](#) last sentence “*Ordering activities should rely on the small business representations made by schedule contractors at the contract level.*”
- ✓ May face a size protest when the NAICS/size standard in the order differs from the NAICS/size standard utilized to determine contractor size in the FSS Contract.
 - SBA area offices are not consistent in timelines ruling.
 - SBA OHA decisions are consistent. Success in dismissing a size protest as untimely on appeal to SBA OHA is likely.
- ✓ Technically, when the NAICS codes differ, the agency cannot take small business credit when the awardee is other than small for the NAICS code in the order even though they are awarded as a small business on their FSS contract. Reference [FAR 8.405-5\(b\)](#) 2nd sentence “*For purposes of reporting an order placed with a small business schedule contractor, an ordering agency may only take credit if the awardee meets a size standard that corresponds to the work performed*”.
 - Due to FPDS system rule constraints, the order size defaults to the NAICS and size of the awardee’s FSS contract. Thus, the ordering agency cannot NOT get small business credit when issuing an order to an FSS Contractor shown as a small business in E-library.

- **Requiring size re-certification for an order**

- ✓ Assures compliance with [FAR 8.405-5\(b\)](#) 2nd sentence “*For purposes of reporting an order placed with a small business schedule contractor, an ordering agency may only take credit if the awardee meets a size standard that corresponds to the work performed.*”
- ✓ However, the ordering agency will receive no small business credit if the awardee is other than small on their FSS contract due to FPDS system rule constraints, the order size defaults to the NAICS and size of the awardee’s FSS contract even if they re-certify as small for the order.

Questions?



!Thank You!

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GSA Interact Professional Services Group

<http://interact.gsa.gov/groups/services-ordering-solutions-avoiding-mas-confusion>